

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, )  
Plaintiff, ) CASE NO. 06-303 M  
v. )  
BERNARDO GOMEZ HERRERA, )  
a.k.a. Roberto Martinez, )  
Defendant. )

Offense charged:

Count I: Conspiracy to Distribute Heroin, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B) and 846.

Date of Detention Hearing: June 19, 2006.

The Court, having conducted a contested detention hearing pursuant to Title 18 U.S.C. § 3142(f), and based upon the factual findings and statement of reasons for detention hereafter set forth, finds that no condition or combination of conditions which the defendant can meet will reasonably assure the appearance of the defendant as required and the safety of any other person and the community. The Government was represented by Lisca Borichewski. The defendant was represented by Catherine Chaney.

The Government filed a Motion for Detention, noting that the rebuttable

1 presumption applies in this matter in addition to the active BICE detainer filed against the  
2 defendant.

3 The defendant argued for release, asserting that the rebuttable presumption does  
4 not apply in the instant offense. Additionally, the defendant offered that the issue of the  
5 active BICE detainer could be addressed in immigration court.

6 **FINDINGS OF FACT AND STATEMENT OF REASONS FOR DETENTION**

7 (1) There is probable cause to believe the defendant committed the  
8 conspiracy drug offense. The maximum penalty is in excess of ten years.  
9 There is therefore a rebuttable presumption against the defendant's  
10 release based upon both dangerousness and flight risk, under Title 18  
11 U.S.C. § 3142(e).

12 (2) There is a rebuttable presumption in this case and on this record there is  
13 nothing that satisfactorily rebuts the presumption against release. Here  
14 are several reasons:  
15 (a) The defendant presents a risk of nonappearance due to the  
16 following: He is a citizen and national of Mexico who is in the  
17 United States illegally; his ties to the Western District of  
18 Washington are unknown; and BICE has filed a detainer;  
19 (b) The defendant presents a risk of danger based on the nature of the  
20 instant offense.

21 (3) Based upon the foregoing information which is consistent with the  
22 recommendation of U.S. Pre-trial Services, it appears that there is no  
23 condition or combination of conditions that would reasonably assure  
24 future Court appearances and/or the safety of other persons or the  
25 community.

**It is therefore ORDERED:**

- (1) The defendant shall be detained pending trial and committed to the custody of the Attorney General for confinement in a correction facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;
- (2) The defendant shall be afforded reasonable opportunity for private consultation with counsel;
- (3) On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the defendant is confined shall deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding; and
- (4) The clerk shall direct copies of this order to counsel for the United States, to counsel for the defendant, to the United States Marshal, and to the United States Pretrial Services Officer.

DATED this 20<sup>th</sup> day of June, 2006.

*M. Benton*

Monica J. Benton  
U.S. Magistrate Judge